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d/b/a Hustler Club-San Francisco

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PETER E. KRESSY,

Plaintiff,

v.

LARRY FLYNT'S HUSTLER CLUB
SAN FRANCISCO, BS MANAGEMENT,
SAW ENTERTAINMENT LTD. –
HUSTLER

Defendants

Case No.: C-07-4892-EDL

**DEFENDANTS' NOTICE OF, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF, MOTION
TO COMPEL ARBITRATION AND STAY
COURT PROCEEDINGS**

Date: December 18, 2007
Time: 9:00 a.m.
Courtroom: E, 15th Floor
Judge: Hon. Elizabeth D. Laporte
(Magistrate Judge)

Trial: None Set
Action Filed: September 20, 2007

1 **I. NOTICE**

2 PLEASE TAKE NOTICE that on December 18, 2007 at 9:00 a.m., or as soon
 3 thereafter as the matter may be heard in Department E on the 15th Floor of the above-entitled
 4 Court, located at 450 Golden Gate Avenue, San Francisco, California, Defendants SAW
 5 Entertainment, Ltd. d/b/a Hustler Club San Francisco ("Hustler") and Defendant BS Management
 6 ("BSM") will and hereby do seek an order compelling submission of Plaintiff's Peter E. Kressy
 7 ("Plaintiff") claims to binding arbitration and staying the instant court proceeding. This motion
 8 will be based on this Notice and Memorandum of Points and Authorities, the declaration of
 9 Gregory Ruffin, the pleadings and papers on file herein, and on any such other evidence as may
 10 be submitted at the hearing of this motion.

11 **II. RELIEF SOUGHT AND INTRODUCTION**

12 Hustler and BSM seek an order compelling submission of Plaintiff's claims to
 13 binding arbitration and staying the instant court proceeding.

14 **III. LEGAL ANALYSIS**

15 Plaintiff brings various wage and hour claims under the Fair Labor Standards Act
 16 ("FLSA") against his former employer, Hustler, and against BSM, an entity for which he never
 17 worked.¹ The suit was filed in the this Court; however all Plaintiff's claims are subject to binding
 18 arbitration as Plaintiff signed, during his employment at Hustler, an agreement to arbitrate "all
 19 claims or controversies arising out of Employee's employment or termination." And, although
 20 Hustler has made demand for arbitration, Plaintiff has refused to arbitrate. Hence, Hustler and
 21 BSM seek an order compelling submission of Plaintiff's claims to binding arbitration and staying
 22 the instant court proceeding.

23 **A. The Complaint**

24 Plaintiff's Complaint, filed September 20, 2007, sets forth three Causes of Action,
 25 all wage and hour claims under the FLSA and all allegedly arising out of Plaintiff's employment
 26 relationship with Hustler.

27

¹ For the convenience of the Court, a copy of Mr. Kressy's Complaint is attached hereto as
 28 Exhibit A.

1 **B. The Agreement To Arbitrate**

2 Attached as Exhibit A to the Declaration of Gregory Ruffin, filed and served
 3 herewith, is a true and correct copy of a document entitled "Mutual Agreement To Arbitrate
 4 Claims And Waive Class Actions," signed by Plaintiff and Hustler on May 3, 2007 (hereinafter
 5 referred to as "Arbitration Agreement"). The pertinent sections of the Arbitration Agreement
 6 read (emphasis added):

7 1. Claims Covered by this Agreement. **Employee and Employer mutually agree to the resolution by arbitration of all claims or controversies arising out of Employee's employment or termination** (collectively, the "Claims") that either party may have against the other, including Employer's parent, subsidiaries, or affiliates or any of their officers, directors, shareholders, representatives, attorneys, agents, or assigns in their capacity as such or otherwise. The Claims covered include, without limitation, claims arising out of contract, tort, or common law, wrongful discharge law, privacy rights, statutory or constitutional protections, **wage and hour law**, claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance, or any other dispute between the parties. The parties understand that, by this Agreement, they are waiving their rights to have a Claim adjudicated by a court or jury.

15 4. Arbitration. Except as otherwise provided above, arbitration shall be in accordance with the National Rules for Resolution of Employment Disputes of the American Arbitration Association (AAA Rules) before a neutral arbitrator who is selected by agreement of the parties or AAA Rules. The arbitration shall take place in the county where the claim arose, or a location agreed upon by the parties. The arbitrator shall apply the substantive law of California, or federal law, or both, as applicable to the Claim(s) asserted. The Parties agree that the arbitrator will determine the scope and extent of discovery, and that it may be more limited than that provided for in the California Code of Civil Procedure. Each party shall be entitled to all types of remedies and relief otherwise available in Court.

21 ...

22 The arbitrator's decision shall be a reasoned decision in writing, revealing the essential findings and conclusions forming the basis of the award, and shall be final and binding on the parties.

25 (Emphasis added.)

26 The Arbitration Agreement encompasses all the Plaintiff's claims, because by its
 27 terms, it extends to "all claims or controversies arising out of Employee's employment or

1 termination" including, but not limited to, claims premised on "wage and hour law" such as
 2 Plaintiff's herein.

3 **C. The Plaintiff Refused To Arbitrate**

4 Defendant Hustler sent Plaintiff a letter both demanding and explaining arbitration.
 5 Plaintiff initially agreed to stipulate to arbitration, but subsequently refused to sign the stipulation
 6 stating a preference to remain in federal court.

7 **D. Arbitration Should Be Ordered**

8 **1. The FAA Applies and Compels Arbitration**

9 Generally, the "Federal Arbitration Act" ("FAA" or "Act") will apply to an
 10 arbitration agreement if the agreement implicates and affects issues of interstate commerce. 9
 11 U.S.C.A. § 2. If not, the arbitration agreement will be analyzed and enforced under state law.
 12 Allied-Bruce Terminex Cos. Inc. v. Dobson (1995) 513 U.S. 265, 277.

13 Here, the employment-based nature of the claims herein at issue renders the FAA
 14 applicable under the "interstate commerce" analysis. Such was the ruling in Circuit City Stores v.
 15 Adams (2001) 532 U.S. 105, 114-119, where the U.S. Supreme Court pronounced the general
 16 applicability of the FAA to employment-based claims. While the FAA's exemption provision, §
 17 1, excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or
 18 any other class of workers engaged in foreign or interstate commerce," the Supreme Court in
 19 Circuit City specifically rejected the 9th Circuit's determination¹ that all contracts of employment
 20 affecting commerce would fall outside of the statute. Instead, it concluded that only
 21 transportation workers' contracts were exempt under 9 U.S.C.A. § 1. Id. at 114-15. Accord
 22 E.E.O.C. v. Waffle House, Inc. (2002) 534 U.S. 279, 289 (employment contracts, except those
 23 covering workers engaged in transportation, are covered by the FAA). See also Allied-Bruce
 24 Terminex Cos. v. Dobson (1995) 513 U.S. 265, 277 (holding that the FAA evinced Congress'
 25 intent to exercise its full commerce power); and Southland Corp. v. Keating (1984) 465 U.S. 1,
 26 16, (holding that Congress intended the FAA to apply in state courts, and to pre-empt state anti-
 27 arbitration laws to the contrary).

28 ¹ In Craft v. Campbell Soup Co. (9th Cir. 1999) 177 F.3d 1083.

1 **E. State Law Contra to Arbitration is Preempted and/or Inapplicable**

2 The FAA mandates enforcement of valid written arbitration agreements. § 2 of the
 3 Act provides, in part: “[a]n agreement in writing to submit to arbitration an existing
 4 controversy...shall be valid, irrevocable and enforceable, save upon such grounds as exist at law
 5 or in equity for the revocation of any contract”.

6 **1. Labor Code §229**

7 The arbitration agreement here at issue falls within the provisions of the FAA.
 8 Pursuant to rules of pre-emption and to the pronouncements of the Supreme Court, therefore, the
 9 FAA applies – to the exclusion of contradictory state laws. One such law is California Labor
 10 Code § 229, which provides, in relevant part: “Actions to enforce the provisions of this article [§
 11 200 et seq. of the California Labor Code] for the collection of due and unpaid wages claimed by
 12 an individual may be maintained without regard to the existence of any private agreement to
 13 arbitrate...”.

14 Despite this provision, enacted in 1959, however, it has been the law for over 15
 15 years that California Labor Code § 229 is preempted by the FAA. Perry v. Thomas (1987) 482
 16 U.S. 483, 491. Perry involved a claim for unpaid wages by a California stockbroker. His
 17 employer sought to compel arbitration which was denied under Labor Code § 229. Recognizing
 18 the strong federal policy favoring arbitration, the U.S. Supreme Court held that “[t]his clear
 19 federal policy places § 2 of the [Federal] Act in unmistakable conflict with California Labor Code
 20 § 229's requirement that litigants be provided a judicial forum for resolving wage disputes.
 21 Therefore, under the Supremacy Clause, the state statute must give way.” Id.

22 The ruling in Perry followed from an earlier preemption determination pronounced
 23 in Southland Corp. v. Keating (1984) 465 U.S. 1, 16-17. There, the U.S. Supreme Court
 24 overturned the California Supreme Court's ruling upholding a statute prohibiting compelled
 25 contractual arbitration of franchise law disputes, as in Perry, on grounds of preemption. Accord
 26 Stirlen v. Supercuts, Inc. (1997) 51 Cal. App.4th 1519, 1543-1544 (reaffirming FAA preemption
 27 of Labor Code §229) and Baker v. Aubry (1989) 216 Cal.App.3d 1259, 1267 cert. denied (1990)

1 498 U.S. 820 (“construction of the valid arbitration agreement presented here is governed by
 2 section 2 of the [FAA] which...preempts our state law” in the area of labor code claims for
 3 overtime wages”).

4 **F. Non-Conflicting State Law Supports Compelling Arbitration**

5 Under California law not in conflict with the FAA, it is provided that arbitration
 6 shall be ordered if an agreement to arbitrate exists, unless the right to arbitrate has been waived or
 7 the arbitration agreement is otherwise non-enforceable. CCP § 1281.2(a) and (b). “A proceeding
 8 to compel arbitration is in essence a suit in equity to compel specific performance of a contract.”
 9 Condee v. Longwood Management Corp. (2001) 88 Cal.App.4th 215, 218. It is subject to
 10 contractual defenses (unconscionability, waiver, capacity, etc.).

11 To obtain an order compelling arbitration, the moving party need only cite facts:
 12 (1) demonstrating the existence of an arbitration agreement; (2) demonstrating the existence of an
 13 arbitrable controversy; and (3) establishing that the opposing party refuses to arbitrate the
 14 controversy. Spear v. California State Auto Association (1992) 2 Cal.4th 1305, 1341. These
 15 elements Hustler has established. For purposes of completeness, however, two issues of contract
 16 enforceability – waiver and unconscionability – are touched upon next.

17 **1. The Arbitration Agreement Is Valid And Enforceable**

18 The arbitration agreement as written and implemented is not subject to challenge
 19 under the holding of Armendariz v. Foundation Health Psychcare (2000) 24 Cal.4th 83. That
 20 case (and authority upholding it²), provides that, when statutory claims affecting employees are
 21 subject to contractual arbitration, the arbitration agreement (expressly and/or by implication) must
 22 provide for five minimum (and non-waivable) rights: (1) a neutral arbitrator; (2) an arbitrator
 23 empowered to award all types of relief available in a civil suit; (3) an arbitrator who is required to
 24 issue a written decision; (4) an arbitration conducted following more than minimal discovery; and
 25 (5) an arbitration where an employee is not required to pay either unreasonable costs or any

26 ² See Little v. Auto Steigler (2003) 29 Cal.4th 1064, 1106 (extending Armendariz requirements to
 27 arbitration of “Tameney claims” for tortious violations of public policy; and Mercuro v. Superior
 28 Court (2002) 96 Cal.App.4th 167, 180 (extending Armendariz requirements to non-FEHA
 statutory claims, therein relative to Labor Code §§ 230.8 and 970).

1 arbitrators' fees or expenses as a condition of access to the arbitrator's forum. *Id.*, 24 Cal.4th at
 2 117.

3 The arbitration agreements here meet these requirements. The arbitration
 4 agreements are not "unconscionable"; the agreements are straightforward and mutual, provide for
 5 a neutral arbitrator, are not one-sided, and Hustler informed Plaintiff (and reiterates here) that it
 6 will pay the costs of arbitration as required by law. In fact, the agreements expressly provide for
 7 a "neutral arbitrator" and is governed by the National Rules of the American Arbitration
 8 Association for Resolution of Employment Disputes, which rules permit the award of any relief
 9 available in a judicial proceeding. See, Ruffin Decl., Exhibit A. Further, because the agreements
 10 do not prohibit discovery, a written decision, or assessment of costs and fees, these provisions
 11 may be read into the agreement, the terms of which need not be expressed in the arbitration
 12 agreement if they can be implied. Under *Armendariz*, such an implication is required here. *Id.*,
 13 24 Cal.4th at 106-107 and 113 (arbitration agreement pertaining to statutory claims will be
 14 interpreted to impliedly provide for (1) sufficient discovery, including access to essential
 15 documents and witnesses; (2) a written arbitration decision; and (3) a requirement that the
 16 employer must bear any costs and fees uniquely associated with the arbitration).

17 While the agreement references the arbitrator's ability to allocate "fees and costs"
 18 to the prevailing party, this provision will not negate the validity of the agreement. Under
 19 *Fittante v. Palm Springs Motors, Inc.* (2003) 105 Cal.App.4th 708, 722, despite incorporation in
 20 the agreement of CCP § 1284.2, which provides that each party to an arbitration pay a pro rata
 21 share of the expenses and fees of the arbitrator, the parties' agreement was interpreted and
 22 construed in compliance with *Armendariz* to mandate payment by the employer of the arbitrators'
 23 unique fees and expenses.

24 **G. All Defendants Are Entitled To Enforce The Arbitration Agreement**

25 By the express terms of the foregoing agreement, Hustler and its "agents and
 26 employees" are entitled to enforce the agreement to arbitrate any and all disputes. Plaintiff
 27 generally alleges an agency relationship between the Defendants; as such all named Defendants

1 named are entitled to enforce the contract to arbitrate. Such was the ruling in Roe v. Gray (D.
 2 Colo. 2001) 165 F.Supp.2d 1164, 1175, where it was determined that non-signatories to an
 3 arbitration agreement had the right to compel arbitration under the agreement with regard to a
 4 dispute in which their opponent alleged that the non-signatories were ‘agents, joint venturers,
 5 partners or representatives’ of signatories and where the claims against signatories and non-
 6 signatories were inextricably intertwined. See also Dryer v. Los Angeles Rams (1985) 40 Cal.3d
 7 406, 418 (“agents” entitled to enforce arbitration agreement); Michaelis v. Schori (1993) 20
 8 Cal.App.4th 133, 139 (same rule for “employees” when specified in the arbitration agreement);
 9 Marcaulay v. Norland (1992) 12 Cal.App.4th 1, 7-8 (same rule for third party beneficiaries); and
 10 Farkar Co. v. R.A. Hanson DISC, Ltd. (2nd Cir. 1978) 583 F.2d 68, 70 (non-signatory parent
 11 corporation bound by arbitration agreement of subsidiary).

12 **H. A Stay Should Be Granted**

13 9 U.S.C.A. § 3 requires a stay in the face of an arbitrable controversy the subject
 14 of a motion to arbitrate. Likewise, CCP § 1281.4 (emphasis added) provides that pending
 15 determination of a motion to arbitrate, and following any order compelling arbitration, the Court,
 16 upon motion, shall stay any state court proceeding until the motion is determined and, if
 17 appropriate, the arbitration concluded. Twentieth Century Fox Film Co. v. Superior Court
 18 (2000) 79 Cal.App.4th 188, 192 .

19 Defendants request and claim entitlement to an immediate stay of the instant civil
 20 suit pending resolution of this Motion and pending arbitration of all claims raised in the
 21 Complaint.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

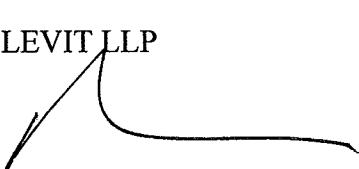
1 **IV. CONCLUSION**

2 Plaintiff is the subject of a valid, irrevocable and fully enforceable Agreement to
 3 arbitrate his disputes with his former employer, Hustler and its' alleged agent BSM. As such,
 4 Hustler and BSM respectfully request that the Court order the claims of Plaintiff into binding
 5 arbitration pursuant to the agreements of the parties and stay this civil proceeding pending
 6 completion of arbitration.

7
 8 Dated: November 8, 2007

9
 10 LONG & LEVIT LLP

11 By

12 
 13 DOUGLAS J. MELTON
 14 JOHN B. SULLIVAN
 15 Attorneys for SAW Entertainment, LTD
 16 d/b/a Hustler Club-San Francisco

17
 18 DOCSZ8000-800\541340.V1

19
 20
 21
 22
 23
 24
 25
 26
 27
 28

EXHIBIT A

01 Peter E. Kressy
02 517 Broadway Number 21
03 San Francisco, CA 94133
04 (415) 845-6322
05 peterkressy@yahoo.com
06 Plaintiff

FILED

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MW
NL

07
08 UNITED STATES DISTRICT COURT
09 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 Peter E. Kressy,)
12)
13 PLAINTIFF) Case No. 07-4892
14)
15) COMPLAINT, EDL
16) Kressy v. Larry Flynt's Hustler
17) Club San Francisco et. al.
18 Larry Flynt's Hustler Club)
19 San Francisco)
20 BS Management)
21 Saw Entertainment Ltd. -)
22 Hustler)
23)
24 DEFENDANTS)
25 _____)
26)
27 :
28 Complaint - Kressy v. Larry Flynt's Hustler Club - Case No. tbd

01 1. Jurisdiction. PLAINTIFF (the "Plaintiff") implores upon
02 the COURT (the "Court") jurisdiction by way of "....enacted by
03 the Senate and House of Representative of the United States of
04 America in Congress assembled... (i) f any provision of this
05 (the Fair Labor Standards) Act (of 1938) or the application
06 of such provision to any person or circumstance is held invalid,
07 the remainder of the Act and the application of such provision
08 to other persons or circumstances shall not be affected thereby.
09 Approved, June 25, 1938."

10
11 2. Jurisdiction 2. Plaintiff implores upon the Court juris-
12 diction by way of 29 CFR Ch. V Part 778--OVERTIME COMPENSATION.

13
14 3. Venue. Plaintiff implores upon the Court venue by way of
15 DEFENDANT ("Defendant") Larry Flynt's Hustler Club San Francisco
16 ("Larry Flynt's Hustler Club") having employed Plaintiff.

17
18 4. Venue 2. Plaintiff implores upon the Court venue by way
19 of Defendant Larry Flynt's Hustler Club place of business
20 located within the city of San Francisco, CA.

21
22 5. Venue 3. Plaintiff implores upon the Court by way of
23 Defendant BS Management having administered paycheck number
24 Check Date: 9-07-2007 to plaintiff in payment of plaintiff wages.

25
26 6. Venue 4. Plaintiff implores upon the Court by way of
27
28 complaint - Kressy v. Larry Flynt's Hustler Club et. al.

Motion D.K. 9/20/2007

STET P.G. 9/20/2007

01 implore by Plaintiff of venue upon the Court, venue by way of
02 Defendant SAW Entertainment, Ltd. - Hustler having administered
03 paycheck number 13064 to Plaintiff in payment of Plaintiff wages.

04

05 7. Venue 5. Plaintiff implores upon the Court venue by
06 way of Defendant BS Management place of business located
07 within the city of San Francisco, CA.

08

09 8. Venue 6. Plaintiff implores upon the Court venue by
10 way of Defendant SAW Entertainment, Ltd. - Hustler showing
11 address of P.O. Box Seattle WA and showing address within
12 the city of San Francisco, CA.

13

14 9. Intradistrict Assignment. Plaintiff implores upon the
15 Court intradistrict assignment by way of convenience for
16 Defendant(s) as per paragraph 3 through paragraph 8 of
17 this COMPLAINT (the "Complaint") as per paragraph 10 of
18 this Complaint to follow.

19

20 10. Construction. Plaintiff implores upon the Court
21 "Pro se complainant is entitled to more liberal construction
22 of...pleading than (is) attorney. Prezzi v Berzak (1972, SD NY)
23 57 FDR149, 16 FR Serv 2d 1970." USCS Federal Rules of Civil
24 Procedure, Rule 8, n 224.

25

26 11. Adoption by Reference. Plaintiff implores upon

27

28 Complaint - Kressy v. Larry Flynt's Hustler Club et. al.
Motion D.K. 9/20/2004

STET P.K. 9/20/2004

01 the Court "Statements in a pleading may be adopted by reference
02 in a different part of the same pleading...or in any motion.
03 A copy of any written instrument which is an exhibit to a
04 pleading is a part thereof for all purposes." USCS Federal Rules
05 of Civil Procedure, Rule 10.(c).

06

07 12. Proceeding Pro Se. Plaintiff implores upon the Court
08 permission to proceed with best counsel to plaintiff counsel
09 of plaintiff as per document related to 22 U.S.C.A. sec. 612
10 and on file with The Honorable the Attorney General, United States.

11

12 13. Proceeding In Forma Pauperis. Plaintiff implores upon
13 the Court to "....authorize the commencement...of...(this)
14 action...without prepayment of fees...." 28 USCS sec. 1915(a)(1)
15 by way of Plaintiff is a "....(bracket)person(close bracket)...."
16 28 USCS sec. 1915(a)(1) and Plaintiff files with the Clerk
17 of the Court APPLICATION TO PROCEED IN FORMA PAUPERIS.

18

19 14. Cause of Action 1. Plaintiff alleges Defendant
20 Larry Flynt's Hustler Club owes Plaintiff overtime wages.

21

22 15. Cause of Action 2. Plaintiff alleges Defendant
23 SAW Entertainment, Ltd. - Hustler owes Plaintiff wages.

24

25 16. Cause of Action 3. Plaintiff alleges Defendant
26 BS Management owes Plaintiff wages.

27 17. Statutes. "CFR 29 Ch. V § 770. OVERTIME... replaces
28 Complaint - Kressy v. Larry Flynt's Hustler Club et. al. Paragraph 2 her,
Motion P.K. 9/20/2007
STET P.K. 9/20/2007
P.K. 9/20/2007
this attachment.

01 19. Prayer for Relief. Plaintiff implores upon the Court an
02 order made by the Court and to and of defendant(s) to pay plaintiff
03 overtime wages, fees, damages, liquidated damages, future wages,
04 and wages withheld as per paragraph 13 of this complaint.

05

06 20. Enforcement of Order. Plaintiff would and will forgo any
07 and all efforts made towards and related to enforcing order made
08 by the Court as per paragraph 19 of this complaint if conditions
09 ("Condition" and numbered and described in full herein) are met.

10

11 21. Enforcement of Order(a). Definition of "herein" as per
12 paragraph 20 of this complaint is "herein this complaint".

13

14 22. Condition 1. Plaintiff is re-instated into Employ.

15

16 23. Condition 2. "Employ" as per paragraph 22 of this complaint
17 is defined as "employment as Floor Host, Larry Flynt's Hustler
18 Club San Francisco, with wages \$12.00 per hour and with work
19 schedule Wednesday, Thursday, Friday, and Saturday of each week
20 11:00 a.m. until 7:00 p.m."

21

22 24. Condition 3. Defendant(s) pay plaintiff \$300.00 for every
23 week between August 30, 2007 and the day Condition 1 (paragraph
24 22 of this complaint) is met, said \$300.00 to be pro-rated and
25 said \$300.00 reflective of the average wages paid to plaintiff
26 during plaintiff employment with Larry Flynt's Hustler Club.

27

28 Complaint - Kressy v. Larry Flynt's Hustler Club - Case No. tbd

26. Condition 4. Defendant(s) pay plaintiff overtime wages as per paragraph 9 of this complaint, and defendant pay plaintiff \$332.68 as per paragraph(s) 11 and 12 of this complaint or defendant show good cause not to pay aforementioned \$332.68, and "good cause" is defined as "good cause by way of the Wisdom of the Court brought to bear upon such matters as may arise".
27. Condition 5. Condition 1 (paragraph 22 of this complaint) is met until and unless Employ is terminated by a person, persons, party or parties not the plaintiff and such termination of Employ is for good cause and "for good cause" is defined as "good cause" as per Condition 4 (paragraph 26 of this complaint).
25. Condition 6. Condition 1 is met when and if Employ is terminated by plaintiff by way of signed and witnessed by the Court documentation, and otherwise Condition 1 is not unmet so long as Condition 1 is met.
28. Condition 7. Condition 2 is not unmet so long as Condition 2 is met.
29. Condition 8. Condition 3 is not unmet so long as Condition 3 is met.
30. Condition 9. Condition 4 is not unmet so long as Condition 4 is met.
31. Condition 10. Condition 1 being unmet is an unmet condition that is sufficient grounds and likely cause and therefore intended by plaintiff by way of signature below for order made by the Court as per paragraph 19 of this complaint be such order sought after enforcement thereof.
32. Claims for Relief 1. Plaintiff implores upon the Court that plaintiff seeks a return to conditions prior to August 30, 2007, along with equity by way of compensation for weeks of work missed from termination, along with wages owed from overtime and withholding, and plaintiff considers not as good an alternative to said return and said equity those matters which may arise by way of litigation.
33. Claims for Relief 2. Plaintiff implores upon the Court to consider Prayer for Relief paragraph(s) 19 through 31 of this complaint citing "...(r)elief in the alternative or of several different types may be demanded." Fed.Rules Civ.Proc.Rule 8(a), 28 U.S.C.A.
34. Statutes 1. The "...(Fair Labor and Standards) Act deals with maximum hours and overtime compensation for employees...and...prescribes the maximum weekly hours of work permitted for the employment of such employees in any workweek without extra compensation for overtime, and at a general overtime rate of pay not less than one and one-half times the employee's regular rate...." 29 CFR sec. 778.110.
35. Statutes 2. "The "regular rate" under the Act is a rate per hour...." 29 CFR sec 778.109.
36. Statutes 3. "As a general standard...40 hours (is the maximum number that an employee...may work...in any workweek without receiving additional compensation at not less than the statutory rate for overtime...." 29 CFR sec. 778.101
39. Service 1. Plaintiff implores upon the Court "...summons and complaint...be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court...." against defendant Larry Flynt's Hustler Club 1031 Kearny San Francisco California.
40. Service 2. Plaintiff implores upon the Court "...summons and complaint...be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court...." against defendant BS Management 250 Columbus San Francisco California.
41. Service 3. Plaintiff implores upon the Court "...summons and complaint...be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court...." against defendant SAW Entertainment Ltd. - Hustler Seattle Washington.
42. Process and Service. "Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff...who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants." Fed.Rules Civ.Proc.Rule 4(a) and "...(a) summons and complaint shall, at the request of the party seeking service...be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose...on behalf of a party authorized to proceed in forma pauperis...." Fed.Rules Civ.Proc.Rule 4(c)(B)(i), 28 U.S.C.A..
43. Signature. Plaintiff signature appears below as "...signature of...(a) party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A..

RICHARD W. WIEKINS, CLERK
U.S. DISTRICT COURT
NO. DIST. OF COLUMBIA

11/08/2007 P:16/16

RECEIVED


9/20/2007
Complaint - Kressy v. Larry Flynt's Hustler Club - Case No. 4801

Kressy

01 Peter E. Kressy
02 517 Broadway Number 21
03 San Francisco, CA 94133
04 (415) 845-6322
05 peterkressy@yahoo.com

06 Plaintiff

07

08 UNITED STATES DISTRICT COURT
09 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 Peter E. Kressy,)
12)
13 PLAINTIFF)
14) Case No. C 07 4892 EDL
15)
16) Service by Mail
17)
18 Larry Flynt's Hustler Club)
19 San Francisco)
20 BS Management)
21 Saw Entertainment Ltd. -)
22 Hustler)
23)
24 DEFENDANTS)
25 _____)

26

27

28 Service by Mail - Kressy v. Larry Flynt's Hustler Club - C 07 4892 EDL

01 1. Service by Mail. "A...complaint may be served upon a defen-
02 dant of any class referred to in paragraph (1) or (3) of subdivi-
03 sion (d) of this rule--...(ii) by mailing a copy of the...com-
04 plaint (by first-class mail, postage prepaid) to the person to be
05 served, together with two copies of a notice and acknowledgement
06 conforming substantially to form 18-A and a return envelope,
07 postage prepaid, addressed to the sender.

08

09 2. Citation paragraph 1 of this Service by Mail. Paragraph 1
10 of this Service by Mail is amended hereby by closing quotation
11 marks and by citing Fed.Rules Civ.Proc. Rule 4 (c) (2) (C)

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13 3. Form 18-A. Notice and Acknowledgment for Service by Mail.
14 United States District Court for the Northern District of
15 California Civil Action, Case No. C 07 4892 EDL, Kressy v.
16 Larry Flynt's Hustler Club et. al.; The enclosed complaint and
17 related documents are served pursuant to Rule 4(c)(2)(C)(ii) of
18 the Federal Rules of Civil Procedure. You must complete this
19 form and return a copy to the sender within 20 days. You must
20 sign and date this acknowledgment. If you are served on behalf
21 of a corporation, unincorporated association (including a part-
22 nership), or other entity, you must indicate under your signa-
23 ture your relationship to that entity. If you do not complete
24 and return the form to the sender within 20 days, you (or the
25 party on whose behalf you are being served) may be required to pay
26 any expenses incurred in serving a summons and complaint in any

27

28 Service by Mail - Kressy v. Larry Flynt's Hustler Club - C 07 4892 EDL

01 other manner permitted by law. If you do complete and return this form, you
02 (or the party on whose behalf you are being served) must answer
03 the complaint within 20 days. If you fail to do so, judgment
04 by default may be taken against you for the relief demanded in
05 the complaint. I declare, under penalty of perjury, that this
06 Notice and Acknowledgment for Service by Mail is being mailed on. *11/16/2007*



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09 4. Certification. I, the undersigned, declare, under penalty
10 of perjury, that I received a copy of this Service by Mail as
11 per and of the above-captioned matter.

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of 18 years and not a party to the within action. My business address is Long & Levit LLP, 465 California Street, Suite 500, San Francisco, California 94104.

On November 8, 2007, I served the document(s) named below on the following attorney(s) of record and/or interested parties in the case of *Kressy v. Larry Flynt's Hustler Club San Francisco, et al.*, United States District Court Northern District of California Case No. C-07-4892-EDI.

**DEFENDANTS NOTICE OF, AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF, MOTION TO COMPEL
ARBITRATION AND STAY COURT PROCEEDINGS**

SERVED ON:

Peter E. Kressy
517 Broadway, Number 21
San Francisco, CA 94133

- (BY MAIL) I am readily familiar with Long & Levit LLP's practice for collection and processing of documents for mailing with the United States Postal Service. I caused such document(s) to be placed in a sealed envelope, addressed to the person(s) on whom it is to be delivered pursuant to the attached service list, with postage thereon fully prepaid, to be deposited with the United States mail at San Francisco, California, that same day in the ordinary course of business.
 - (BY ELECTRONIC FILING) I electronically filed the document(s) with the Clerk of Court using the CM/ECF system which will send notification of such filing to the person(s) or attorney(s) of record at the listed email address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 8, 2007, at San Francisco, California.

J. Locker